IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2700 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DHANSUKHBHAI MULJIBHAI KANKHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2700 of 2001

MR ANSHIN H DESAI for Petitioner No. 1-4

MR MANISH DAGLI, AGP, for Respondent No. 1-3

NOTICE UNSERVED for Respondent No. 4,7-11

..... for Respondent No. 5

NOTICE SERVED for Respondent No. 5/1-6

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/04/2002

ORAL JUDGEMENT

Rule. Mr Manish Dagli, AGP, waives service of rule. At the request of the learned counsel for the

parties, the matter is taken up for final hearing today.

2. What is challenged in this petition under Articles 226 and 227 of the Constitution is the order dated 13-3-2001 passed by the Secretary, Revenue Department (Appeals) of the State Government rejecting the petitioners' prayer for interim relief during pendency of the revision application filed by the petitioners against the orders of the Collector requiring the petitioners to pay to the Government fine of Rs.1,18,978/- for unauthorised nonagricultural user of the land in question.

3. The petitioners' case was that the petitioners had executed an irrevocable power of attorney and that power of attorney had sold the land to respondents No.4 to 11 and that the petitioners cannot be held liable for unauthorised nonagricultural user of the land in question. It was further submitted that in any view of the matter if the authorities are entitled to make any recovery, the same should be done from the land which is the subject matter of the dispute.

4. The revisional authority has refused to grant interim relief on the ground of balance of convenience. The revisional authority has however not given any reason why the fine in question cannot be recovered from the persons presently in possession of the land in question or by making coercive recovery with reference to the property in question.

5. The present petition was filed in April, 2001 and ad-interim relief protecting the petitioners against recovery of fine was granted on 16-4-2001. The said ad-interim relief has been operating since then. In this set of circumstances, it appears to the Court that interests of justice would be served if this petition is disposed of with a direction that the ad-interim relief granted by this Court earlier on 16-4-2001 shall continue till disposal of the petitioners' Revision Application No.3 of 2000 before the State Government.

6. In view of the above discussion, this petition is disposed of with a direction that the ad-interim relief granted by this Court earlier on 16-4-2001 shall continue till disposal of the petitioners' revision application before the Secretary, Revenue Department (Appeals). The petitioners shall cooperate for expeditious disposal of the revision application.

It is clarified that this Court has not gone into

the merits of the controversy between the parties and that it will be open to the parties to raise all available contentions under law and that the revisional authority shall decide the matter in accordance with law without being influenced by the grant of interim relief by this Court.

7. The petition accordingly stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)

zgs/-